

Alienation of the Institution of the Assembly!

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Abstract

Kosovo does not have any emphasized experience related to development and operation of independent state institutions. Development of power in Kosovo, which derives directly from the votes of citizens, happened only after the end of the conflict in 1999, respectively after the installation of the mission of SC of UN – UNMIK and organization of first elections in 2000.

But since the establishment of first institutions until now some interventions were noticed, and those interventions, for a country with long tradition but even for Kosovo are not common and are unconstitutional. In Kosovo the most visible and most pronounced interventions happened in the work of legislature, Assembly, initially by the mission of UNMIK and later by the Government itself. Therefore, Kosovo Assembly as the highest legislative and representative body as it was originally intended with the Constitutional Framework and later with the Constitution of Republic of Kosovo, not rarely did not have the possibility to fulfill its constitutional and legal functions.

The Parliament, a key political institution of the state, which in the past has appeared in various forms, functions and nominations, has since its initial appearance of the Parliamentarism as an idea had a primary goal in limiting or reducing the absolute power, the monarchic power. In the meantime, the idea of establishment of parliaments and determination of their functions came to develop, obviously with major contributions of many scholars, such as Montesquieu, who in his work 'spirit of law' had stated: "more of us would better exercise the legislative powers than a person alone", a statement which paved the way for the establishment of a representative legislative body, right on a peaking clash between the monarchs who wanted to preserve their 'absolute powers' by all means, and forces which were against concentrating all power onto a

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single person. Therefore, it is quite apparent that the goal of both scholars and practitioners of the time was one: limit the power by creating a representative institution - the parliament, and further the vesting of certain authorizations to it, including the oversight role on other pillars, mainly the executive branch, independently of the fact that in various periods, these powers were exercised by different actors.

Independently of the denominations which may be diverse, such as Parliament, Assembly, Council, Congress, etc., in practice in various places, and in comparative constitutional theory, there are principally three functions of a Parliament:

- Legislative function;
- Electoral function and
- Oversight function.¹

Exercising all these main functions parliaments of different countries in the world often take a stronger role in their ability of fulfilling all three functions successfully, while there are also periods, such as the 20th Century, in which the role of the Parliament lost relevance in a century known as a century of further weakening of the parliamentary power².

All these ideas of Parliament and parliamentarism may be attributed to developed countries such as UK, France and the US, which are also considered to be the “cradles” of democracy, but not to countries with major political and social problems in the period of development and concretisation of the Parliamentarism idea.

Therefore, the world may be divided between the countries with some parliamentary practice, and the others, which for many reasons, lack such tradition.

Kosovo may freely be ranked in the latter list, countries without much parliamentary tradition, for two reasons:

- first, Kosovo had, even contrary to its will, until recently been part of the former SFRY, a country which had established

¹ Arsim Bajrami. *Parliamentarism (Parlamentarizmi)*, p. 104, Prishtina, 2010

² Andrew Heywood, *Politics (Politika)*, p. 293, translated by Blendi Kraja, Shkodra 2008

levels of assembly starting from Provincial, Republican and Federation assemblies, with fictitious roles and functions since everything was decided by the party – the Communist League of Yugoslavia, namely its chief, and

- second, after the war Kosovo was initially administered by an international mission, and only in 2008 it declared its independence and sovereignty, and obtained its international recognition.

Hence, since the end of the war in Kosovo, namely since the establishment of the first democratic institutions, originally termed “provisional”, the Kosovo Assembly, the highest representative and legislative body in Kosovo, was severely challenged by interferences, which ultimately prevented it from fulfilling its constitutional and legal duties. In a chronological analysis developments in and around the Assembly may be divided into two periods, albeit both resulting in almost identical developments for the Assembly and its role. In the period before the declaration of independence of Kosovo, when the functions of the Assembly were provided on by the Constitutional Framework, and the post-independence period, in which the functions are regulated by the new Constitution of the Republic of Kosovo.

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After the war Kosovo was administered by the UNMIK Mission, which was established to perform pursuant to the UNSCR 1244. Following the extinction of “parallel” institutions, established by Albanians during the period of classic occupation of Kosovo, and following establishment of the Joint Institutions of Administration (JIAC), this administration organized the first democratic elections, initially local elections (in 2000), and the general elections for the Kosovo Assembly (2001), which pursuant to the Constitutional Framework was to be the highest representative and legislative

institution³ of the country, which was to be elected by Kosovars for the first time with a secret vote⁴, freely and in an election process recognized internationally. Following election and constitution of the Assembly, this institution was to appoint the President and the Government of Kosovo, undoubtedly marking Kosovo's first step towards building democratic institutions, which would come out of a free expression of the sovereign power – the people.

Due to the undetermined political status of Kosovo all institutions, both local and central, had limited competencies or better stated had to share such powers with international authorities in Kosovo. The same fate was to be lived by the Kosovo Assembly as well, because the SRSG's "hands" held all three powers: legislative, executive and judiciary. This kind of power was absurd and non-democratic, and in contradiction to international norms and standards on a balanced division of powers, thereby allowing the Head of UNMIK to interfere directly with the functions of the Assembly, in two ways. In the first way, the SRSG was the final authority, which promulgated the laws which were passed through the UNMIK Regulations which were further signed and promulgated⁵ by him, while the other way was even more extraordinary, and it usually consisted of the political evaluation the SRSG made of certain actions of the Assembly.

The most critical case was for example the issuance of a Resolution on borders in 2002 (on non-recognition of an agreement on borders between the Republic of Serbia and the FRY of Macedonia) by the Kosovo Assembly, and its prompt annulment thereof by the SRSG⁶, which was quoted to be an unstated "conflict" between international and local authorities, in this case between the SRSG and the Kosovo Assembly. All these matters make it easy to comprehend that the local institutions, and specifically the Assembly, throughout the period of international administration were largely challenged by international

³ Constitutional Framework for Provisional Self-Government, Chapter 9, Section 1, 9.1.1

⁴ Ibid., Section 1, 9.1.2

⁵ Ibid., Section 1, 9.1.45

⁶ Early Warning Report (UNDP), Report 1, May-August 2002

authorities and their interferences with the roles disabling it from fulfilling its constitutional mandates to the interest of Kosovo citizens. The manner of promulgation of laws through UNMIK Regulations, the entitlement of the SRSG to intervene in legal contents by adding, omitting or amending parts of the law; and ultimately the annulment, repelling of other relevant documents issued by the Assembly, as in the case above, render it clear that the Assembly was more of a technical rubber stamp throughout the period, and had to strictly be subject to "political will" of the SRSG and the UNMIK in general, which was imposed by the SRSG through its supervision and its diligence in preventing excess/violation of the UNSCR 1244 and other regulations and acts of this mission, rather than performing pursuant to the Constitutional Framework, being the highest representative and legislative institution of the country.

Even in the period after the declaration of independence, and the entry into force of the new Constitution of Kosovo, which provided explicitly on the authorizations of the Kosovo Assembly⁷, namely providing that the Assembly would be the highest democratic representative and legislative body, this institution continues to face with problems of almost the same nature, but now in a different level, in the relation with the executive branch – the Government, which controls the majority in the Assembly. We have quite often discussed about public statements of Members of Parliament about the "Government controlling the Assembly's agenda", and then some other statements about the Government "not even recognizing the role of the Assembly as an oversight institution of the Government". In this sense, we had a statement by the KDI Director, an organisation which monitors and prepares reports on Assembly performance: "We witness today the fact that during 2011 (the Assembly) has not made any advancement in terms of preventing interferences of the Government in the world of the Kosovo Assembly – setting also from the legislative agenda, which was served by the Kosovo Government to the Assembly, and dictating its work".⁸

⁷ Constitution of the Republic of Kosovo, Chapter IV

⁸ <http://www.evropaelire.org/content/article/24432270.html>

One may only think about the beginning of the “technical” talks with the Republic of Serbia. The Government had already begun the talks without even notifying the Assembly, which afterwards with an initiative taken by several Members of Parliament the matter was opened for discussion at the Assembly, resulting thereafter in a resolution on “Dialogue between the Republic of Kosovo and the Republic of Serbia”⁹. The adoption of the resolution had clearly implied an oversight on the Government in the process of talks and agreements to be made with the Republic of Serbia. The oversight on the Government in the process of “technical talks” with the Republic of Serbia, a neighbouring country to the Republic of Kosovo, falls within the scope of constitutional authorizations of the Kosovo Assembly. The Constitution of Kosovo provides that the powers of the Assembly also include the scrutiny on the Government and other public institutions, which pursuant to the Constitution and laws report to the Assembly¹⁰, and oversight on foreign and security policies¹¹.

Another objective of the Resolution, which may be derived at by its content, was to support the talks, but also to limit the talks to “technical matters” alone, but also, as was stated, to allow for an additional role for the Kosovo Assembly in providing oversight on the process. With such a Resolution the Kosovo Assembly had bound the Government of Kosovo, inter alia, to provide the “substantial dialogue document” and the Prime Minister’s envoy, namely the head of the Kosovo delegation, “to report to the Assembly, the Foreign Affairs Committee and to plenary sessions”. Nevertheless, one may only be reminded of one of March sessions, in which the largest opposition group had requested explanations on talks from the “Chief Negotiator”, and her “refusing” to report, or simply stated having an

⁹http://www.assemblykosova.org/common/docs/Rezoluta_per_dialogun_midis_R.Kosoves_dhe_R.Serbise_2.pdf

¹⁰ Constitution of the Republic of Kosovo, Article 65, Paragraph 9

¹¹ Ibid., Article 65, paragraph 12

entirely ignoring approach towards the requests made by the Assembly members.¹²

There are many examples to state to the fact that the Government as a whole, but also its individual members, perpetually try to rise above the Assembly and its members, or just simply reject legal requests made by the Assembly, which ultimately appoints the Government and its members. In this way, the Assembly is prevented from exercising its own constitutional duties, because the two paragraphs of the Article 65, of the Constitution provide on three fields the Assembly must exercise oversight on (pertaining to the concrete example taken), the "Government performance", "foreign policy" and "security policy", while it is clear that "technical talks" with the Republic of Serbia contain all three.

With the aforementioned simple examples occurring in both periods of Assembly's existence and operations, one may freely conclude that the Kosovo Assembly, the highest representative, democratic and legislative body, despite its major efforts, is still being avoided by the Kosovo Government, which in an other interpretation would mean that the Government is avoiding the will of the Kosovo citizens. In this manner, it is again easy to conclude that this is leading towards an "alienation of the institution of the Assembly", namely, alienation of its key roles and functions, which are explicitly provided upon by the Constitution of the Republic of Kosovo, towards creating a "technical rubber stamping institution", which only reads, reviews and improves draft laws of the Government, and does not oversee or control the Government, and an institution which is informed or notified only when, how much and how the Government wants to inform or notify it, a situation which is violation of the Constitution of the Republic of Kosovo.

¹² http://www.assembly-kosova.org/common/docs/proc/trans_s_2012_03_15_10_4084_al.pdf

Bibliography:

Bajrami, Arsim. *Parliamentarianism (Comparative aspects)*, Pristina, 2010

Heywood, Andrew. *Politics (Translated by Blendi Kraja)*, Shkodër, 2008

Constitution of the Republic of Kosovo, 2008

Law on General Elections, 2008/03-L073

Law on Local Elections, 2008/03-L072

Constitutional Framework for Provisional Self-Government, 2001

Early Warning Report (UNDP), Report 1, May-August 2002

Web-sites

<http://www.assembly-kosova.org>

<http://www.evropaelire.org>